

FILED FEB 8 1990

SENATE FILE 2274  
BY HUTCHINS and HULTMAN

Passed Senate, Date 3/19/90 (p. 1168) Passed House, Date 3/26/90 (p. 1408)  
Vote: Ayes 48 Nays 0 Vote: Ayes 96 Nays 0  
Approved April 6, 1990

A BILL FOR

- 1 An Act relating to targeted small businesses, and imposing
- 2 penalties.
- 3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

SENATE FILE 2274

S-5092

- 1 Amend Senate File 2274 as follows:
- 2 1. Page 7, lines 11 and 12, by striking the words
- 3 "inspections and appeals" and inserting the following:
- 4 "economic development".
- 5 2. Page 7, line 13, by striking the words
- 6 "inspections and appeals" and inserting the following:
- 7 "economic development".

By COMMITTEE ON SMALL BUSINESS  
AND ECONOMIC DEVELOPMENT  
LEONARD BOSWELL, Chairperson

S-5092 FILED FEBRUARY 14, 1990  
*(Adopted 3/19 (p. 1168))*

SENATE FILE 2274

S-5168

- 1 Amend Senate File 2274 as follows:
- 2 1. Page 5, line 32, by striking the word "three"
- 3 and inserting the following: "ten".
- 4 2. Page 6, line 10, by striking the word "three"
- 5 and inserting the following: "ten".

By BEVERLY A. HANNON  
MIKE CONNOLLY  
TOM MANN, JR.

S-5168 FILED FEBRUARY 21, 1990  
*(Adopted 3/19 (p. 1168))*

SC 2274

1 Section 1. Section 12.44, unnumbered paragraph 1, Code  
2 1989, is amended to read as follows:

3 Agencies of state government shall be required to waive the  
4 requirement of satisfaction or performance bonds for targeted  
5 small businesses which are able to demonstrate the inability  
6 of securing such a bond because of a lack of experience, lack  
7 of net worth, or lack of capital. This waiver shall not apply  
8 to businesses with a record of repeated failure of substantial  
9 performance or material breach of contract in prior  
10 circumstances. The waiver shall be applied only to a project  
11 or individual transaction amounting to fifty thousand dollars  
12 or less, notwithstanding section 573.2. In order to qualify,  
13 the targeted small business shall provide written evidence to  
14 the department of inspections and appeals that the bond would  
15 otherwise be denied the business. The granting of the waiver  
16 shall in no way relieve the business from its contractual  
17 obligations and shall not preclude the state agency from  
18 pursuing any remedies under law upon default or breach of  
19 contract.

20 Section 2. Section 15.102, subsection 5, Code 1989, is  
21 amended to read as follows:

22 5. "Targeted small business" means a small business which  
23 is fifty-one percent or more owned, operated, and actively  
24 managed by one or more women or minority persons, provided the  
25 business meets all of the following requirements:

- 26 1. Is located in this state.
- 27 2. Is operated for profit.
- 28 3. Has twenty or fewer full-time equivalent employees.
- 29 4. Has an annual gross income of less than three million  
30 dollars computed as an average of the three preceding fiscal  
31 years.

32 PARAGRAPH DIVIDED. As used in this subsection, "minority  
33 person" means an individual who is a Black, Hispanic, Asian or  
34 Pacific Islander, or American Indian or Alaskan native.

35 Sec. 3. Section 15.108, subsection 7, paragraph c. Code

1 Supplement 1989, is amended to read as follows:

2 c. Aid ~~in~~ for the development and implementation of the  
3 Iowa targeted small business procurement Act established in  
4 sections 73.15 through 73.21 and the targeted small business  
5 financial assistance program established in section 15.247.  
6 The duties of the director under this paragraph include the  
7 following:

8 (1) The director, in conjunction with the director of the  
9 department of management, shall publicize the procurement ~~set-~~  
10 ~~aside~~ goal program ~~to~~ for targeted small businesses and to  
11 agencies of state government, attempt to locate targeted small  
12 businesses able to perform ~~set-aside-awards~~ contracts, and  
13 encourage program participation. The director may request the  
14 cooperation of the department of general services, the  
15 department of transportation, the state board of regents, or  
16 any other agency of state government in publicizing this  
17 program.

18 (2) The director, in conjunction with the director of the  
19 department of management, shall publicize the financial  
20 assistance program established in section 15.247 to targeted  
21 small businesses.

22 (3) When the director determines, or is notified by the  
23 head of another agency of state government, that a targeted  
24 small business is unable to perform a procurement ~~set-aside~~  
25 ~~awards~~ contract, the director shall assist the small business  
26 in attempting to remedy the causes of the inability to  
27 perform. In assisting the small business, the director may  
28 use any management or financial assistance programs available  
29 through state or governmental agencies or private sources.

30 (4) The director, in conjunction with the director of the  
31 department of management and jointly with the universities  
32 under the jurisdiction of the state board of regents, the area  
33 community colleges, and the area vocational schools, shall  
34 develop and make available in all areas of the state, programs  
35 to offer and deliver concentrated, in-depth advice and

1 services to assist targeted small businesses. The advice and  
2 services shall extend to all areas of business management in  
3 its practical application, including but not limited to  
4 accounting, engineering, drafting, grant writing, obtaining  
5 financing, locating bond markets, market analysis, and  
6 projections of profit and loss.

7 (5) The director shall submit an annual report to the  
8 governor and the general assembly relating progress toward  
9 realizing the goals and objectives of the procurement ~~set-~~  
10 aside goal program and the financial assistance program  
11 established in section 15.247 during the preceding fiscal  
12 year. The director of the department of management shall  
13 assist in compiling the data to be included in the report.  
14 The report shall include the following information:

15 (a) The total dollar value and number of potential ~~set-~~  
16 aside-awards targeted small business procurement contracts  
17 identified and the percentage of total state procurements this  
18 reflects.

19 (b) The total dollar value and number of ~~set-aside~~  
20 procurement contracts awarded to targeted small businesses  
21 with appropriate designation as to the total number and value  
22 of ~~set-aside~~ contracts awarded to each certified targeted  
23 small business, and the percentages of the total state  
24 procurements the figures of total dollar value and the number  
25 of ~~set-asides~~ targeted small business contracts reflects.

26 (c) The number of contracts which were designated ~~and-set~~  
27 aside to satisfy targeted small business procurement goals  
28 established pursuant to sections 73.15 through 73.21, but  
29 which were not awarded to a targeted small business, the  
30 estimated total dollar value of these awards, the lowest offer  
31 or bid on each of these awards made by the small business and  
32 the price at which these contracts were awarded pursuant to  
33 the normal procurement procedures.

34 (d) The efforts undertaken to identify targeted small  
35 businesses and to publicize and encourage participation in the

1 set-aside procurement goal and loan guarantee programs during  
2 the preceding year.

3 (e) The efforts undertaken to develop technical assistance  
4 programs and to remedy the inability of targeted small  
5 businesses to perform on potential set-asides procurement  
6 contracts.

7 (f) Information about the number of applications received  
8 and processed by the Iowa finance authority under the loan  
9 guarantee program, the value of loans guaranteed, and follow-  
10 up information on targeted small businesses which have been  
11 awarded loan guarantees.

12 (g) The director's recommendations for strengthening the  
13 set-aside procurement goal program and delivery of services to  
14 targeted small businesses. The director of the department of  
15 management shall provide recommendations to the director  
16 regarding strengthening contract compliance activities by  
17 state agencies.

18 (h) The department of general services, the department of  
19 transportation, the state board of regents, and all other  
20 agencies of state government shall provide all relevant  
21 information requested by the director for the preparation of  
22 the annual report.

23 Sec. 4. Section 15.247, subsection 2, Code Supplement  
24 1989, is amended to read as follows:

25 2. The department shall establish, contingent upon the  
26 availability of funds authorized for the program, a targeted  
27 small business financial assistance program, to provide for  
28 loans, loan guarantees, revolving loans, loans secured by  
29 accounts receivable, or grants to targeted small businesses.  
30 A targeted small business in any year shall receive under this  
31 program not more than twenty-five thousand dollars in a loan  
32 or grant, and not more than forty thousand dollars in a  
33 guarantee, or a combination of loans, grants, or guarantees.  
34 The program shall provide guarantees not to exceed seventy-  
35 five percent for loans made by qualified lenders. The

1 department shall establish a financial assistance reserve  
2 account from funds provided for this program, from which any  
3 default on a guaranteed loan under this section shall be paid.  
4 In administering the program the department shall not  
5 guarantee loan values in excess of the amount credited to the  
6 reserve account and only moneys set aside in the loan reserve  
7 account may be used for the payment of a default.

8 Sec. 5. Section 15.264, subsection 8, paragraph c, Code  
9 1989, is amended to read as follows:

10 c. Ensure that the loans guaranteed under this part are  
11 disbursed and utilized in accordance with the targeted small  
12 business ~~set-aside-requirements~~ procurement goals of sections  
13 73.15 through 73.21.

14 Sec. 6. Section 73.16, subsections 1 and 2, Code 1989, are  
15 amended to read as follows:

16 1. Every agency, department, commission, board, committee,  
17 officer or other governing body of the state shall purchase  
18 goods and services supplied by small businesses and targeted  
19 small businesses in Iowa. In addition to the other provisions  
20 of this section relating to ~~set-asides~~ procurement contracts  
21 for targeted small businesses, all purchasing authorities  
22 shall assure that a proportionate share of small businesses  
23 and targeted small businesses identified under the uniform  
24 small business vendor application program of the department of  
25 economic development are given the opportunity to bid on all  
26 solicitations issued by agencies and departments of state  
27 government.

28 2. The director of each agency or department of state  
29 government having purchasing authority shall ~~designate-and-set~~  
30 ~~aside-for-awarding-to~~ establish a procurement goal from  
31 certified targeted small businesses identified pursuant to  
32 section 10A.104, subsection 8, of at least two three percent,  
33 ~~and-should-set-a-goal-of-up-to-ten-percent,~~ of the value of  
34 anticipated procurements of goods and services, including  
35 construction, but not including utility services, each fiscal

1 year. The director of each department and agency of state  
2 government shall cooperate with the director of the department  
3 of inspections and appeals, the director of the department of  
4 economic development, and the director of the department of  
5 management and do all acts necessary to carry out the  
6 provisions of this division.

7 A merged area school, area education agency, or school  
8 district shall establish a procurement goal from certified  
9 targeted small businesses, identified pursuant to section  
10 10A.104, subsection 8, of at least three percent of the value  
11 of anticipated procurements of goods and services including  
12 construction, but not including utility services, each fiscal  
13 year.

14 Sec. 7. Section 73.17, Code 1989, is amended to read as  
15 follows:

16 73.17 TARGETED SMALL BUSINESS SET-ASIDE PROCUREMENT GOALS  
17 -- PRELIMINARY PROCEDURES.

18 Quarterly the director of each agency and department of  
19 state government shall review the agency's or department's  
20 anticipated purchasing requirements. The directors shall  
21 notify the director of the department of economic development  
22 of their anticipated purchases and recommended set-asides  
23 procurements with unit quantities and total costs for  
24 procurement contracts designated to satisfy the targeted small  
25 business procurement goal not later than August 15 of each  
26 fiscal year and quarterly thereafter. The directors may  
27 divide the procurements so designated into contract award  
28 units of economically feasible production runs to facilitate  
29 offers or bids from targeted small businesses. In designating  
30 set-aside procurements intended to satisfy the targeted small  
31 business procurement goal, the directors may vary the included  
32 procurements so that a variety of goods and services produced  
33 by different targeted small businesses may be set-aside  
34 procured each year. The director of the department of  
35 economic development, in conjunction with the director of the

1 department of management, shall review the information  
2 submitted and may require modifications from the agencies and  
3 departments.

4 Sec. 8. Section 73.18, Code 1989, is amended to read as  
5 follows:

6 73.18 NOTICE OF SOLICITATION FOR BIDS -- IDENTIFICATION OF  
7 TARGETED SMALL BUSINESSES.

8 The director of each agency or department releasing a  
9 solicitation for bids or request for proposal under the set-  
10 aside targeted small business procurement goal program shall  
11 notify the director of the department of inspections and  
12 appeals prior to or upon release of the solicitation. The  
13 director of the department of inspections and appeals shall  
14 notify the soliciting agency or department of any targeted  
15 small businesses which have been certified pursuant to section  
16 10A.104, subsection 8, and which may be qualified to bid.

17 Sec. 9. Section 73.19, Code 1989, is amended to read as  
18 follows:

19 73.19 NEGOTIATED PRICE OR BID CONTRACT.

20 In awarding a contract under the targeted small business  
21 set-aside procurement goal program, a director of an agency or  
22 department having purchasing authority may use either a  
23 negotiated price or bid contract procedure. ~~The amount of an~~  
24 ~~award shall not exceed by more than five percent that~~  
25 ~~director's estimated price for the goods or services if they~~  
26 ~~were to be purchased on the open market or under the~~  
27 ~~competitive bidding procedures of any provisions of law or~~  
28 ~~rules relating to competitive bidding procedures, and not~~  
29 ~~under this set-aside program.~~ A director of an agency or  
30 department using a negotiated contract shall consider any  
31 targeted small business engaged in that business. The  
32 director of the department of economic development or the  
33 director of the department of management may assist in the  
34 negotiation of a contract price under this section. Surety  
35 bonds guaranteed by the United States small business



1 administration are acceptable security for a construction  
2 award under this section.

3 Sec. 10. Section 73.20, Code 1989, is amended to read as  
4 follows:

5 73.20 DETERMINATION OF ABILITY TO PERFORM.

6 Before announcing ~~the set-aside~~ a contract award pursuant  
7 to the targeted small business procurement goal program, the  
8 purchasing authority shall evaluate whether the targeted small  
9 business scheduled to receive the award is able to perform the  
10 ~~set-aside~~ contract. This determination shall include  
11 consideration of production and financial capacity and  
12 technical competence. If the purchasing authority determines  
13 that the targeted small business may be unable to perform, the  
14 director of the department of economic development shall be  
15 notified and shall assist the targeted small business pursuant  
16 to section 15.108, subsection 7, paragraph "c", subparagraph  
17 (3).

18 Sec. 11. Section 73.21, Code 1989, is amended to read as  
19 follows:

20 73.21 OTHER PROCUREMENT PROCEDURES.

21 All laws and rules pertaining to solicitations, bid  
22 evaluations, contract awards, and other procurement matters  
23 apply to procurement ~~set-asides~~ contracts for targeted small  
24 businesses to the extent there is no conflict. If this  
25 division conflicts with other laws or rules, then this  
26 division governs.

27 Sec. 12. Section 714.8, Code 1989, is amended by adding  
28 the following new subsection:

29 NEW SUBSECTION. 13. FRAUDULENT PRACTICES IN CONNECTION  
30 WITH TARGETED SMALL BUSINESS PROGRAMS.

31 a. Knowingly transfers or assigns assets, ownership, or  
32 equitable interest in property of a business to a woman or  
33 minority person primarily for the purpose of obtaining  
34 benefits under targeted small business programs if the  
35 transferor would otherwise not be qualified for such programs.

1 b. Solicits and is awarded a state contract on behalf of a  
2 targeted small business for the purpose of transferring the  
3 contract to another for a percentage if the person  
4 transferring or intending to transfer the work had no  
5 intention of performing the work.

6 c. Knowingly falsifying information on an application for  
7 the purpose of obtaining benefits under targeted small  
8 business programs.

9 A violation under this subsection is grounds for  
10 decertification of the targeted small business connected with  
11 the violation. Decertification shall be in addition to any  
12 penalty otherwise authorized by this section.

13 EXPLANATION

14 This bill alters the targeted small business set-aside  
15 program into a goal oriented program in an attempt to conform  
16 with the United States Supreme Court decision in City of  
17 Richmond v. J. A. Croson Co. The current law contains a  
18 mandatory 2 percent set-aside with a 10 percent goal. The  
19 proposed revision would convert the program to a 3 percent  
20 goal. The goal program would be extended to merged area  
21 schools, area education agencies, and school districts. The  
22 requirements for becoming a certified targeted small business  
23 are expanded by the bill. The business must be located in  
24 Iowa, operated for profit, must have 20 or fewer full-time  
25 employees, and must have an annual average gross income of  
26 less than \$3,000,000. The bill imposes new penalties for  
27 fraudulent practices in obtaining certification as a targeted  
28 small business or in the award of a targeted small business  
29 procurement contract under the revised goal program. Current  
30 financial assistance for targeted small businesses is expanded  
31 to permit revolving loans and loans secured by accounts  
32 receivable. Current provisions permitting the waiver of bond  
33 requirements on public projects are expanded by including in  
34 addition to lack of experience, two new bases for assistance,  
35 lack of net worth and lack of capital.

1 This bill may contain a state mandate as defined in chapter  
2 25B.

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SENATE FILE 2274  
FISCAL NOTE

A fiscal note for Senate File 2274 is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

Senate File 2274 alters the targeted small business set-aside program into a goal oriented program. In order to conform with the U.S. Supreme Court decision in City of Richmond v. J.A. Croson Co., the Bill changes the current mandatory 2 percent set-aside with a 10 percent goal to 3 percent goal. The goal program would be extended to merged area schools, area education agencies, and school districts.

The Bill expands the requirements for becoming a targeted small business. A business must be located in Iowa, operated for profit, must have 20 or fewer full-time employees, and must have an annual average gross income of less than \$3,000,000.

The Bill imposes new penalties for fraudulent practices in obtaining certifications as a targeted small business or in the award of a targeted small business procurement contracts.

ASSUMPTIONS:

1. Cost estimates are based on the recommendations of the Task Force commissioned by the Iowa Department of Management.
2. Additional costs to county or local governments may result due to proposed changes in the bond waiver provisions. The costs estimates cannot be determined.

FISCAL IMPACT:

	FY 1990	FY 1991	FY 1992
General Fund Revenue	\$ 47,692	\$185,000	\$185,000
Expenditure:			
Salaries	\$ 40,292	\$102,092*	\$102,207*
Support	7,400	82,908	82,793
	-----	-----	-----
Total	\$ 47,692	\$185,000	\$185,000

\*The salary estimates include salaries for 2.00 additional FTE positions. Currently, there is only 1.00 full-time staff assigned for this Program.

ISSUED BY Department of Economic Development

FILED FEBRUARY 16, 1990

BY DENNIS PROUTY, FISCAL DIRECTOR



1 Section 1. Section 12.44, unnumbered paragraph 1, Code  
2 1989, is amended to read as follows:

3 Agencies of state government shall be required to waive the  
4 requirement of satisfaction or performance bonds for targeted  
5 small businesses which are able to demonstrate the inability  
6 of securing such a bond because of a lack of experience, lack  
7 of net worth, or lack of capital. This waiver shall not apply  
8 to businesses with a record of repeated failure of substantial  
9 performance or material breach of contract in prior  
10 circumstances. The waiver shall be applied only to a project  
11 or individual transaction amounting to fifty thousand dollars  
12 or less, notwithstanding section 573.2. In order to qualify,  
13 the targeted small business shall provide written evidence to  
14 the department of inspections and appeals that the bond would  
15 otherwise be denied the business. The granting of the waiver  
16 shall in no way relieve the business from its contractual  
17 obligations and shall not preclude the state agency from  
18 pursuing any remedies under law upon default or breach of  
19 contract.

20 Section 2. Section 15.102, subsection 5, Code 1989, is  
21 amended to read as follows:

22 5. "Targeted small business" means a small business which  
23 is fifty-one percent or more owned, operated, and actively  
24 managed by one or more women or minority persons, provided the  
25 business meets all of the following requirements:

- 26 1. is located in this state.
- 27 2. Is operated for profit.
- 28 3. Has twenty or fewer full-time equivalent employees.
- 29 4. Has an annual gross income of less than three million  
30 dollars computed as an average of the three preceding fiscal  
31 years.

32 PARAGRAPH DIVIDED. As used in this subsection, "minority  
33 person" means an individual who is a Black, Hispanic, Asian or  
34 Pacific Islander, or American Indian or Alaskan native.

35 Sec. 3. Section 15.108, subsection 7, paragraph c, Code

1 Supplement 1989, is amended to read as follows:

2 c. Aid ~~in~~ for the development and implementation of the  
3 Iowa targeted small business procurement Act established in  
4 sections 73.15 through 73.21 and the targeted small business  
5 financial assistance program established in section 15.247.  
6 The duties of the director under this paragraph include the  
7 following:

8 (1) The director, in conjunction with the director of the  
9 department of management, shall publicize the procurement ~~set-~~  
10 aside goal program ~~to~~ for targeted small businesses and to  
11 agencies of state government, attempt to locate targeted small  
12 businesses able to perform ~~set-aside-awards~~ contracts, and  
13 encourage program participation. The director may request the  
14 cooperation of the department of general services, the  
15 department of transportation, the state board of regents, or  
16 any other agency of state government in publicizing this  
17 program.

18 (2) The director, in conjunction with the director of the  
19 department of management, shall publicize the financial  
20 assistance program established in section 15.247 to targeted  
21 small businesses.

22 (3) When the director determines, or is notified by the  
23 head of another agency of state government, that a targeted  
24 small business is unable to perform a procurement set-aside  
25 awards contract, the director shall assist the small business  
26 in attempting to remedy the causes of the inability to  
27 perform. In assisting the small business, the director may  
28 use any management or financial assistance programs available  
29 through state or governmental agencies or private sources.

30 (4) The director, in conjunction with the director of the  
31 department of management and jointly with the universities  
32 under the jurisdiction of the state board of regents, the area  
33 community colleges, and the area vocational schools, shall  
34 develop and make available in all areas of the state, programs  
35 to offer and deliver concentrated, in-depth advice and

1 services to assist targeted small businesses. The advice and  
2 services shall extend to all areas of business management in  
3 its practical application, including but not limited to  
4 accounting, engineering, drafting, grant writing, obtaining  
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6 projections of profit and loss.

7 (5) The director shall submit an annual report to the  
8 governor and the general assembly relating progress toward  
9 realizing the goals and objectives of the procurement ~~set-~~  
10 aside goal program and the financial assistance program  
11 established in section 15.247 during the preceding fiscal  
12 year. The director of the department of management shall  
13 assist in compiling the data to be included in the report.  
14 The report shall include the following information:

15 (a) The total dollar value and number of potential ~~set-~~  
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17 identified and the percentage of total state procurements this  
18 reflects.

19 (b) The total dollar value and number of ~~set-aside~~  
20 procurement contracts awarded to targeted small businesses  
21 with appropriate designation as to the total number and value  
22 of ~~set-aside~~ contracts awarded to each certified targeted  
23 small business, and the percentages of the total state  
24 procurements the figures of total dollar value and the number  
25 of ~~set-asides~~ targeted small business contracts reflects.

26 (c) The number of contracts which were designated ~~and-set~~  
27 aside to satisfy targeted small business procurement goals  
28 established pursuant to sections 73.15 through 73.21, but  
29 which were not awarded to a targeted small business, the  
30 estimated total dollar value of these awards, the lowest offer  
31 or bid on each of these awards made by the small business and  
32 the price at which these contracts were awarded pursuant to  
33 the normal procurement procedures.

34 (d) The efforts undertaken to identify targeted small  
35 businesses and to publicize and encourage participation in the



1 set-aside procurement goal and loan guarantee programs during  
2 the preceding year.

3 (e) The efforts undertaken to develop technical assistance  
4 programs and to remedy the inability of targeted small  
5 businesses to perform on potential set-asides procurement  
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7 (f) Information about the number of applications received  
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22 the annual report.

23 Sec. 4. Section 15.247, subsection 2, Code Supplement  
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8 Sec. 5. Section 15.264, subsection 8, paragraph c, Code  
9 1989, is amended to read as follows:

10 c. Ensure that the loans guaranteed under this part are  
11 disbursed and utilized in accordance with the targeted small  
12 business ~~set-aside-requirements~~ procurement goals of sections  
13 73.15 through 73.21.

14 Sec. 6. Section 73.16, subsections 1 and 2, Code 1989, are  
15 amended to read as follows:

16 1. Every agency, department, commission, board, committee,  
17 officer or other governing body of the state shall purchase  
18 goods and services supplied by small businesses and targeted  
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22 shall assure that a proportionate share of small businesses  
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33 ~~and-should-set-a-goal-of-up-to-ten-percent,~~ of the value of  
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35 construction, but not including utility services, each fiscal

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4 economic development, and the director of the department of  
5 management and do all acts necessary to carry out the  
6 provisions of this division.

7 A merged area school, area education agency, or school  
8 district shall establish a procurement goal from certified  
9 targeted small businesses, identified pursuant to section  
10 10A.104, subsection 8, of at least ten percent of the value of  
11 anticipated procurements of goods and services including  
12 construction, but not including utility services, each fiscal  
13 year.

14 Sec. 7. Section 73.17, Code 1989, is amended to read as  
15 follows:

16 73.17 TARGETED SMALL BUSINESS SET-ASIDE PROCUREMENT GOALS  
17 -- PRELIMINARY PROCEDURES.

18 Quarterly the director of each agency and department of  
19 state government shall review the agency's or department's  
20 anticipated purchasing requirements. The directors shall  
21 notify the director of the department of economic development  
22 of their anticipated purchases and recommended set-asides  
23 procurements with unit quantities and total costs for  
24 procurement contracts designated to satisfy the targeted small  
25 business procurement goal not later than August 15 of each  
26 fiscal year and quarterly thereafter. The directors may  
27 divide the procurements so designated into contract award  
28 units of economically feasible production runs to facilitate  
29 offers or bids from targeted small businesses. In designating  
30 set-aside procurements intended to satisfy the targeted small  
31 business procurement goal, the directors may vary the included  
32 procurements so that a variety of goods and services produced  
33 by different targeted small businesses may be set-aside  
34 procured each year. The director of the department of  
35 economic development, in conjunction with the director of the

1 department of management, shall review the information  
2 submitted and may require modifications from the agencies and  
3 departments.

4 Sec. 8. Section 73.18, Code 1989, is amended to read as  
5 follows:

6 73.18 NOTICE OF SOLICITATION FOR BIDS -- IDENTIFICATION OF  
7 TARGETED SMALL BUSINESSES.

8 The director of each agency or department releasing a  
9 solicitation for bids or request for proposal under the set-  
10 aside targeted small business procurement goal program shall  
11 notify the director of the department of inspections-and  
12 appeals economic development prior to or upon release of the  
13 solicitation. The director of the department of inspections  
14 and-appeals economic development shall notify the soliciting  
15 agency or department of any targeted small businesses which  
16 have been certified pursuant to section 10A.104, subsection 8,  
17 and which may be qualified to bid.

18 Sec. 9. Section 73.19, Code 1989, is amended to read as  
19 follows:

20 73.19 NEGOTIATED PRICE OR BID CONTRACT.

21 In awarding a contract under the targeted small business  
22 set-aside procurement goal program, a director of an agency or  
23 department having purchasing authority may use either a  
24 negotiated price or bid contract procedure. ~~The amount of an~~  
25 ~~award shall not exceed by more than five percent that~~  
26 ~~director's estimated price for the goods or services if they~~  
27 ~~were to be purchased on the open market or under the~~  
28 ~~competitive bidding procedures of any provisions of law or~~  
29 ~~rules relating to competitive bidding procedures, and not~~  
30 ~~under this set-aside program.~~ A director of an agency or  
31 department using a negotiated contract shall consider any  
32 targeted small business engaged in that business. The  
33 director of the department of economic development or the  
34 director of the department of management may assist in the  
35 negotiation of a contract price under this section. Surety

1 bonds guaranteed by the United States small business  
2 administration are acceptable security for a construction  
3 award under this section.

4 Sec. 10. Section 73.20, Code 1989, is amended to read as  
5 follows:

6 73.20 DETERMINATION OF ABILITY TO PERFORM.

7 Before announcing ~~the set-aside~~ a contract award pursuant  
8 to the targeted small business procurement goal program, the  
9 purchasing authority shall evaluate whether the targeted small  
10 business scheduled to receive the award is able to perform the  
11 ~~set-aside~~ contract. This determination shall include  
12 consideration of production and financial capacity and  
13 technical competence. If the purchasing authority determines  
14 that the targeted small business may be unable to perform, the  
15 director of the department of economic development shall be  
16 notified and shall assist the targeted small business pursuant  
17 to section 15.108, subsection 7, paragraph "c", subparagraph  
18 (3).

19 Sec. 11. Section 73.21, Code 1989, is amended to read as  
20 follows:

21 73.21 OTHER PROCUREMENT PROCEDURES.

22 All laws and rules pertaining to solicitations, bid  
23 evaluations, contract awards, and other procurement matters  
24 apply to procurement ~~set-asides~~ contracts for targeted small  
25 businesses to the extent there is no conflict. If this  
26 division conflicts with other laws or rules, then this  
27 division governs.

28 Sec. 12. Section 714.8, Code 1989, is amended by adding  
29 the following new subsection:

30 NEW SUBSECTION. 13. FRAUDULENT PRACTICES IN CONNECTION  
31 WITH TARGETED SMALL BUSINESS PROGRAMS.

32 a. Knowingly transfers or assigns assets, ownership, or  
33 equitable interest in property of a business to a woman or  
34 minority person primarily for the purpose of obtaining  
35 benefits under targeted small business programs if the

1 transferor would otherwise not be qualified for such programs.

2 b. Solicits and is awarded a state contract on behalf of a  
3 targeted small business for the purpose of transferring the  
4 contract to another for a percentage if the person  
5 transferring or intending to transfer the work had no  
6 intention of performing the work.

7 c. Knowingly falsifying information on an application for  
8 the purpose of obtaining benefits under targeted small  
9 business programs.

10 A violation under this subsection is grounds for  
11 decertification of the targeted small business connected with  
12 the violation. Decertification shall be in addition to any  
13 penalty otherwise authorized by this section.

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SENATE FILE 2274

AN ACT

RELATING TO TARGETED SMALL BUSINESSES, AND IMPOSING PENALTIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 12.44, unnumbered paragraph 1, Code 1989, is amended to read as follows:

Agencies of state government shall be required to waive the requirement of satisfaction or performance bonds for targeted small businesses which are able to demonstrate the inability of securing such a bond because of a lack of experience, lack of net worth, or lack of capital. This waiver shall not apply to businesses with a record of repeated failure of substantial performance or material breach of contract in prior circumstances. The waiver shall be applied only to a project or individual transaction amounting to fifty thousand dollars

or less, notwithstanding section 573.2. In order to qualify, the targeted small business shall provide written evidence to the department of inspections and appeals that the bond would otherwise be denied the business. The granting of the waiver shall in no way relieve the business from its contractual obligations and shall not preclude the state agency from pursuing any remedies under law upon default or breach of contract.

Sec. 2. Section 15.102, subsection 5, Code 1989, is amended to read as follows:

5. "Targeted small business" means a small business which is fifty-one percent or more owned, operated, and actively managed by one or more women or minority persons, provided the business meets all of the following requirements:

1. Is located in this state.
2. Is operated for profit.
3. Has twenty or fewer full-time equivalent employees.
4. Has an annual gross income of less than three million dollars computed as an average of the three preceding fiscal years.

PARAGRAPH DIVIDED. As used in this subsection, "minority person" means an individual who is a Black, Hispanic, Asian or Pacific Islander, or American Indian or Alaskan native.

Sec. 3. Section 15.108, subsection 7, paragraph c, Code Supplement 1989, is amended to read as follows:

c. Aid ~~is~~ for the development and implementation of the Iowa targeted small business procurement Act established in sections 73.15 through 73.21 and the targeted small business financial assistance program established in section 15.247. The duties of the director under this paragraph include the following:

(1) The director, in conjunction with the director of the department of management, shall publicize the procurement ~~set-~~ aside goal program ~~to for~~ targeted small businesses and to agencies of state government, attempt to locate targeted small

businesses able to perform set-aside-awards contracts, and encourage program participation. The director may request the cooperation of the department of general services, the department of transportation, the state board of regents, or any other agency of state government in publicizing this program.

(2) The director, in conjunction with the director of the department of management, shall publicize the financial assistance program established in section 15.247 to targeted small businesses.

(3) When the director determines, or is notified by the head of another agency of state government, that a targeted small business is unable to perform a procurement set-aside awards contract, the director shall assist the small business in attempting to remedy the causes of the inability to perform. In assisting the small business, the director may use any management or financial assistance programs available through state or governmental agencies or private sources.

(4) The director, in conjunction with the director of the department of management and jointly with the universities under the jurisdiction of the state board of regents, the area community colleges, and the area vocational schools, shall develop and make available in all areas of the state, programs to offer and deliver concentrated, in-depth advice and services to assist targeted small businesses. The advice and services shall extend to all areas of business management in its practical application, including but not limited to accounting, engineering, drafting, grant writing, obtaining financing, locating bond markets, market analysis, and projections of profit and loss.

(5) The director shall submit an annual report to the governor and the general assembly relating progress toward realizing the goals and objectives of the procurement set-aside goal program and the financial assistance program established in section 15.247 during the preceding fiscal

year. The director of the department of management shall assist in compiling the data to be included in the report. The report shall include the following information:

(a) The total dollar value and number of potential set-aside-awards targeted small business procurement contracts identified and the percentage of total state procurements this reflects.

(b) The total dollar value and number of set-aside procurement contracts awarded to targeted small businesses with appropriate designation as to the total number and value of set-aside contracts awarded to each certified targeted small business, and the percentages of the total state procurements the figures of total dollar value and the number of set-asides targeted small business contracts reflects.

(c) The number of contracts which were designated and-set aside to satisfy targeted small business procurement goals established pursuant to sections 73.15 through 73.21, but which were not awarded to a targeted small business, the estimated total dollar value of these awards, the lowest offer or bid on each of these awards made by the small business and the price at which these contracts were awarded pursuant to the normal procurement procedures.

(d) The efforts undertaken to identify targeted small businesses and to publicize and encourage participation in the set-aside procurement goal and loan guarantee programs during the preceding year.

(e) The efforts undertaken to develop technical assistance programs and to remedy the inability of targeted small businesses to perform on potential set-asides procurement contracts.

(f) Information about the number of applications received and processed by the Iowa finance authority under the loan guarantee program, the value of loans guaranteed, and follow-up information on targeted small businesses which have been awarded loan guarantees.



(g) The director's recommendations for strengthening the set-aside procurement goal program and delivery of services to targeted small businesses. The director of the department of management shall provide recommendations to the director regarding strengthening contract compliance activities by state agencies.

(h) The department of general services, the department of transportation, the state board of regents, and all other agencies of state government shall provide all relevant information requested by the director for the preparation of the annual report.

Sec. 4. Section 15.247, subsection 2, Code Supplement 1989, is amended to read as follows:

2. The department shall establish, contingent upon the availability of funds authorized for the program, a targeted small business financial assistance program, to provide for loans, loan guarantees, revolving loans, loans secured by accounts receivable, or grants to targeted small businesses. A targeted small business in any year shall receive under this program not more than twenty-five thousand dollars in a loan or grant, and not more than forty thousand dollars in a guarantee, or a combination of loans, grants, or guarantees. The program shall provide guarantees not to exceed seventy-five percent for loans made by qualified lenders. The department shall establish a financial assistance reserve account from funds provided for this program, from which any default on a guaranteed loan under this section shall be paid. In administering the program the department shall not guarantee loan values in excess of the amount credited to the reserve account and only moneys set aside in the loan reserve account may be used for the payment of a default.

Sec. 5. Section 15.264, subsection 8, paragraph c, Code 1989, is amended to read as follows:

c. Ensure that the loans guaranteed under this part are disbursed and utilized in accordance with the targeted small

business set-aside-requirements procurement goals of sections 73.15 through 73.21.

Sec. 6. Section 73.16, subsections 1 and 2, Code 1989, are amended to read as follows:

1. Every agency, department, commission, board, committee, officer or other governing body of the state shall purchase goods and services supplied by small businesses and targeted small businesses in Iowa. In addition to the other provisions of this section relating to set-asides procurement contracts for targeted small businesses, all purchasing authorities shall assure that a proportionate share of small businesses and targeted small businesses identified under the uniform small business vendor application program of the department of economic development are given the opportunity to bid on all solicitations issued by agencies and departments of state government.

2. The director of each agency or department of state government having purchasing authority shall designate-and-set aside-for-awarding-to establish a procurement goal from certified targeted small businesses identified pursuant to section 10A.104, subsection 8, of at least two ten percent and-should-set-a-goal-of-up-to-ten-percent of the value of anticipated procurements of goods and services, including construction, but not including utility services, each fiscal year. The director of each department and agency of state government shall cooperate with the director of the department of inspections and appeals, the director of the department of economic development, and the director of the department of management and do all acts necessary to carry out the provisions of this division.

A merged area school, area education agency, or school district shall establish a procurement goal from certified targeted small businesses, identified pursuant to section 10A.104, subsection 8, of at least ten percent of the value of anticipated procurements of goods and services including

construction, but not including utility services, each fiscal year.

Sec. 7. Section 73.17, Code 1989, is amended to read as follows:

73.17 TARGETED SMALL BUSINESS SET-ASIDE PROCUREMENT GOALS  
-- PRELIMINARY PROCEDURES.

Quarterly the director of each agency and department of state government shall review the agency's or department's anticipated purchasing requirements. The directors shall notify the director of the department of economic development of their anticipated purchases and recommended set-asides procurements with unit quantities and total costs for procurement contracts designated to satisfy the targeted small business procurement goal not later than August 15 of each fiscal year and quarterly thereafter. The directors may divide the procurements so designated into contract award units of economically feasible production runs to facilitate offers or bids from targeted small businesses. In designating set-aside procurements intended to satisfy the targeted small business procurement goal, the directors may vary the included procurements so that a variety of goods and services produced by different targeted small businesses may be set-aside procured each year. The director of the department of economic development, in conjunction with the director of the department of management, shall review the information submitted and may require modifications from the agencies and departments.

Sec. 8. Section 73.18, Code 1989, is amended to read as follows:

73.18 NOTICE OF SOLICITATION FOR BIDS -- IDENTIFICATION OF TARGETED SMALL BUSINESSES.

The director of each agency or department releasing a solicitation for bids or request for proposal under the set-aside targeted small business procurement goal program shall notify the director of the department of inspections and

appeals economic development prior to or upon release of the solicitation. The director of the department of inspections and appeals economic development shall notify the soliciting agency or department of any targeted small businesses which have been certified pursuant to section 10A.104, subsection 8, and which may be qualified to bid.

Sec. 9. Section 73.19, Code 1989, is amended to read as follows:

73.19 NEGOTIATED PRICE OR BID CONTRACT.

In awarding a contract under the targeted small business set-aside procurement goal program, a director of an agency or department having purchasing authority may use either a negotiated price or bid contract procedure. ~~The amount of an award shall not exceed by more than five percent that director's estimated price for the goods or services if they were to be purchased on the open market or under the competitive bidding procedures of any provisions of law or rules relating to competitive bidding procedures, and not under this set-aside program. A director of an agency or department using a negotiated contract shall consider any targeted small business engaged in that business.~~ The director of the department of economic development or the director of the department of management may assist in the negotiation of a contract price under this section. Surety bonds guaranteed by the United States small business administration are acceptable security for a construction award under this section.

Sec. 10. Section 73.20, Code 1989, is amended to read as follows:

73.20 DETERMINATION OF ABILITY TO PERFORM.

Before announcing the set-aside a contract award pursuant to the targeted small business procurement goal program, the purchasing authority shall evaluate whether the targeted small business scheduled to receive the award is able to perform the set-aside contract. This determination shall include

consideration of production and financial capacity and technical competence. If the purchasing authority determines that the targeted small business may be unable to perform, the director of the department of economic development shall be notified and shall assist the targeted small business pursuant to section 15.108, subsection 7, paragraph "c", subparagraph (3).

Sec. 11. Section 73.21, Code 1989, is amended to read as follows:

73.21 OTHER PROCUREMENT PROCEDURES.

All laws and rules pertaining to solicitations, bid evaluations, contract awards, and other procurement matters apply to procurement ~~set-asides~~ contracts for targeted small businesses to the extent there is no conflict. If this division conflicts with other laws or rules, then this division governs.

Sec. 12. Section 714.8, Code 1989, is amended by adding the following new subsection:

NEW SUBSECTION. 13. FRAUDULENT PRACTICES IN CONNECTION WITH TARGETED SMALL BUSINESS PROGRAMS.

a. Knowingly transfers or assigns assets, ownership, or equitable interest in property of a business to a woman or minority person primarily for the purpose of obtaining benefits under targeted small business programs if the transferor would otherwise not be qualified for such programs.

b. Solicits and is awarded a state contract on behalf of a targeted small business for the purpose of transferring the contract to another for a percentage if the person transferring or intending to transfer the work had no intention of performing the work.

c. Knowingly falsifying information on an application for the purpose of obtaining benefits under targeted small business programs.

A violation under this subsection is grounds for decertification of the targeted small business connected with

the violation. Decertification shall be in addition to any penalty otherwise authorized by this section.

\_\_\_\_\_  
JO ANN ZIMMERMAN  
President of the Senate

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DONALD D. AVENSON  
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2274, Seventy-third General Assembly.

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JOHN P. DWYER  
Secretary of the Senate

Approved  1990

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TERRY E. BRANSTAD  
Governor